

Conference Engrossed

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**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 252

HOUSE BILL 2083

AN ACT

AMENDING SECTION 48-3772, ARIZONA REVISED STATUTES, AS AMENDED BY SENATE BILL 1141, SECTION 7, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; RELATING TO DROUGHT EMERGENCY GROUNDWATER TRANSFERS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 48-3772, Arizona Revised Statutes, as amended by
3 Senate Bill 1141, section 7, forty-ninth legislature, second regular session,
4 as transmitted to the governor, is amended to read:

5 48-3772. Duties and powers of district regarding replenishment

6 A. The district shall:

7 1. Establish annually the costs and expenses to replenish groundwater
8 pursuant to this article with respect to all parcels of member lands and all
9 member service areas located in each active management area, including
10 capital expenses, debt service expenses, the operation, maintenance,
11 replacement and administrative costs and expenses of the district,
12 replenishment reserve costs and expenses as provided in subsection E of this
13 section and reasonable reserves. Separate calculations of costs and expenses
14 shall be made for each active management area in which member lands or member
15 service areas are located and for each membership category. Costs and
16 expenses attributed by the district to contract replenishment obligations
17 shall not be included in these calculations.

18 2. Provide for the payment of all costs and expenses to replenish
19 groundwater pursuant to this chapter and the payment of operation,
20 maintenance, replacement and administrative costs and expenses and debt
21 service expenses of the district.

22 3. Levy an annual replenishment assessment against each parcel of
23 member land pursuant to section 48-3778 and an annual replenishment tax
24 against each municipal provider that has a member service area pursuant to
25 section 48-3781 to pay the district's costs and expenses as established
26 pursuant to paragraph 1 of this subsection.

27 4. Levy a contract replenishment tax against municipal providers that
28 are parties to contracts authorized under subsection B, paragraph 9 of this
29 section to pay the district's costs and expenses to replenish groundwater
30 based on contract replenishment obligations.

31 5. Establish and maintain reserve accounts in amounts as may be deemed
32 necessary to perform the district's obligations under this article.

33 6. Fulfill all obligations under resolutions adopted pursuant to
34 subsection B, paragraph 10 of this section.

35 7. Levy an activation fee as follows:

36 (a) For subdivisions within member lands and member service areas that
37 are enrolled before May 6, 2004 and that had not been issued a public report
38 before August 12, 2005, the district shall levy a one-time activation fee
39 against each housing unit to be constructed within the subdivision.

40 (b) For subdivisions within member lands and member service areas that
41 are enrolled on or after May 6, 2004, the district shall levy a one-time
42 activation fee against each housing unit to be constructed within the
43 subdivision.

1 (c) The activation fee shall be paid to the district before issuance
2 of a public report for each real estate subdivision identified in subdivision
3 (a) or (b) of this paragraph, as provided in section 45-576, subsection C.

4 (d) The activation fee shall be established annually by the district.
5 Revenues from the activation fee together with revenues from other sources
6 that are legally available to the district for those uses shall be used by
7 the district to acquire, lease or exchange water or water rights and develop
8 infrastructure necessary for the district to perform its replenishment
9 obligations.

10 8. For any year, set all of its rates and charges associated with the
11 acquisition, lease or exchange of water or water rights and development of
12 infrastructure necessary for the district to perform its replenishment
13 obligations, other than the annual membership dues established pursuant to
14 section 48-3779, so that the total projected revenues from revenue sources
15 other than the annual membership dues, that are legally available to the
16 district in that year to pay costs associated with the acquisition, lease or
17 exchange of water or water rights and development of infrastructure necessary
18 for the district to perform its replenishment obligations, shall be at least
19 three times the total projected revenues from the annual membership dues in
20 that year. For the purposes of this paragraph, costs associated with the
21 acquisition, lease or exchange of water or water rights do not include the
22 annual costs associated with delivery of water for replenishment purposes.

23 B. The district may:

24 1. Acquire, develop, construct, operate, maintain, replace and acquire
25 permits for water storage, storage facilities and recovery wells for
26 replenishment purposes.

27 2. Acquire, transport, hold, exchange, own, lease, store or replenish
28 water, except groundwater withdrawn from an active management area, subject
29 to the provisions of title 45, for the benefit of member lands and member
30 service areas.

31 3. Acquire, hold, exchange, own, lease, retire or dispose of water
32 rights for the benefit of member lands and member service areas.

33 4. Require municipal providers to provide such information, in such
34 form and within the time limits prescribed by the district, as may be
35 necessary to carry out the purpose of this chapter.

36 5. Levy and collect assessments, fees, charges, taxes and other
37 revenues as are provided in this chapter for the financing of replenishment
38 activities.

39 6. Contract for or perform feasibility studies of water storage,
40 storage facilities and recovery wells for replenishment purposes.

41 7. Acquire real and personal property for water storage, storage
42 facilities and recovery wells for replenishment purposes by purchase, lease,
43 donation, dedication, exchange or other lawful means.

1 8. Use any facilities and any excess storage capacity of any state
2 demonstration projects undertaken pursuant to title 45, chapter 3.1 for water
3 storage for replenishment purposes.

4 9. Subject to subsection G of this section, contract with any
5 municipal provider having a member service area to replenish groundwater on
6 behalf of the municipal provider and with respect to the member service area
7 in an amount in excess of the sum of the service area replenishment
8 obligations applicable to the member service area for all years in which the
9 district has not completed the replenishment of the groundwater replenishment
10 obligation for the member service area.

11 10. Adopt resolutions granting water availability status to a member
12 service area of a city, town or private water company and committing to
13 replenish a specified average annual volume of water in a location where the
14 city, town or private water company may physically access the water for
15 service to its customers, if all of the following apply:

16 (a) The district has reviewed its requirements for transportation of
17 central Arizona project water, its contracts, subcontracts, letter
18 agreements, excess water contracts, and other contractual obligations and its
19 member service area and member land requirements and has determined that the
20 district can meet those obligations and that capacity remains in the central
21 Arizona project to meet the obligations undertaken through the resolution.

22 (b) The resolution acknowledges that the commitment to replenish the
23 specified average annual volume of water in the location cited in the
24 resolution shall be a permanent obligation of the district, unless one of the
25 following applies:

26 (i) A permanent substitute supply of water is found for the city, town
27 or private water company and the substitution is approved by the director of
28 water resources, thus terminating the water availability status of the member
29 service area.

30 (ii) The requirements of section 45-576.07, subsection A are not met,
31 and thus the director of water resources does not issue an order granting or
32 maintaining the city, town or private water company as having an assured
33 water supply based in whole or in part on section 45-576.07. If no order is
34 issued within two years of the district adopting the resolution, the
35 resolution may be repealed, and the district shall be relieved of all
36 obligations under the resolution.

37 (c) The average annual volume of water specified in the resolution,
38 when added to the average annual volume of water specified in all other
39 resolutions adopted pursuant to this paragraph, does not exceed twenty
40 thousand acre-feet.

41 (d) The district has entered into an agreement with the city, town or
42 private water company under which the city, town or private water company
43 will hold for the district's future use, and provide to the district when
44 needed, sufficient water to meet the obligations undertaken by the district
45 through the resolution.

1 (e) The district determines that the obligations undertaken by the
2 district through the resolution will not increase annual replenishment
3 assessment rates or costs to central Arizona project contract and subcontract
4 holders and its member service areas and member lands.

5 (f) The director of water resources has found, pursuant to section
6 45-576.07, subsection H, that the district has the capability to grant water
7 availability status to member service areas.

8 11. Provide in resolutions adopted pursuant to paragraph 10 of this
9 subsection that the district may fulfill its obligations under the resolution
10 in any year by directly delivering to the city, town or private water company
11 the water that otherwise would have been replenished pursuant to the
12 resolution, if all of the following apply:

13 (a) The district has reviewed its requirements for transportation of
14 central Arizona project water, its contracts, subcontracts, letter
15 agreements, excess water contracts, and other contractual obligations, its
16 member service area and member land requirements and has determined that the
17 district can meet those obligations and that capacity remains in the central
18 Arizona project to make direct deliveries pursuant to this paragraph.

19 (b) The district determines that the delivery will not increase annual
20 replenishment assessment rates or costs to central Arizona project contract
21 and subcontract holders, its member service area and member lands.

22 12. Enter into agreements with a city, town or private water company
23 that will have water made available to it through a resolution adopted
24 pursuant to paragraph 10 of this subsection and under which the city, town or
25 private water company compensates the district for the costs and fair value
26 of the water supply provided by the district.

27 13. Issue revenue bonds pursuant to article 3 of this chapter to fund
28 the costs and expenses of the district for the acquisition, lease or exchange
29 of water or water rights and the development of infrastructure necessary for
30 the district to perform its replenishment obligations subject to the
31 following:

32 (a) The principal of, interest and premiums, if any, on revenue bonds
33 issued pursuant to article 3 of this chapter to acquire, lease or exchange
34 water or water rights and develop infrastructure necessary for the district
35 to perform its replenishment obligations are not payable from any revenues of
36 the district other than revenues generated or collected pursuant to this
37 article that are legally available to the district for those purposes and
38 revenues from the investment of the proceeds of the bonds.

39 (b) The district may not use the proceeds of the bonds to acquire or
40 lease:

41 (i) Groundwater, as defined in section 45-101, except as expressly
42 authorized in sections 45-547, ~~45-552~~, 45-553 and 45-554.

43 (ii) Surface water, as defined in section 45-101, that is the subject
44 of a general adjudication pursuant to title 45, chapter 1, article 9.

1 (c) Nothing in subdivision (b) of this paragraph prohibits the
2 district from acquiring or leasing central Arizona project water.

3 14. Except as provided in section 48-3780.01, subsection B, in addition
4 to any other assessments, fees, charges or taxes levied and collected under
5 this chapter, or under any declaration, contract or agreement entered into
6 under this chapter, charge annual dues for membership pursuant to section
7 48-3779 against each parcel of member land and each municipal provider that
8 has a member service area.

9 C. The functions of the district under subsection B, paragraph 1 of
10 this section may be performed on behalf of the district by other persons
11 under contract with the district.

12 D. The capital costs of the facilities of any state demonstration
13 projects used by the district pursuant to subsection B, paragraph 8 of this
14 section shall not be included in the capital costs and expenses established
15 by the district under subsection A, paragraph 1 of this section.

16 E. The district shall establish and maintain a replenishment reserve
17 as follows:

18 1. The district shall calculate a reserve target for each of the three
19 active management areas within the district and shall identify the reserve
20 target in the plan of operation prepared pursuant to section 45-576.02. The
21 reserve target for each active management area shall be calculated as
22 follows:

23 (a) Establish the projected one hundred year replenishment obligation
24 for each active management area. For the purposes of this subdivision, each
25 active management area's projected one hundred year replenishment obligation
26 does not include replenishment obligations under resolutions adopted pursuant
27 to subsection B, paragraph 10 of this section or replenishment obligations
28 for category 2 member lands.

29 (b) Subtract from the active management area's projected one hundred
30 year replenishment obligation the sum of the following volumes of water
31 derived from sources identified in the plan as water that the district plans
32 to use to meet its replenishment obligations for that active management area:

33 (i) The annual volume of each nondeclining, long-term municipal and
34 industrial subcontract for central Arizona project water multiplied by one
35 hundred.

36 (ii) The annual volume of water under leases or contracts that can be
37 made physically and legally available to the district consistent with the
38 rules adopted pursuant to section 45-576, subsection H, multiplied by the
39 number of years, not to exceed one hundred, in which the water is to be made
40 available to the district. The water need not be continuously available to
41 be included in this item. A lease or contract shall not be considered under
42 this item if the water to be made available under the lease or contract is
43 for a term of less than twenty years.

1 (iii) The total volume of groundwater that the district plans to
2 transport to the active management area during the next one hundred years as
3 allowed by title 45, chapter 2, article 8.1.

4 (iv) The total volume of all sources of water not identified in items
5 (i), (ii) or (iii) of this subdivision that will not be held by the district
6 under a lease or contract. Volumes to be included under this item must be
7 consistent with the rules adopted by the director pursuant to section 45-576,
8 subsection H.

9 (c) Multiply the result from subdivision (b) of this paragraph by
10 twenty per cent. The result is the reserve target for the active management
11 area.

12 2. The reserve target for an active management area may be adjusted by
13 the district, subject to the approval of the director of water resources,
14 based on changes in either of the following:

15 (a) The active management area's projected one hundred year
16 replenishment obligation.

17 (b) The volumes of water identified in the plan of operation prepared
18 pursuant to section 45-576.02 as water that the district plans to use to meet
19 its replenishment obligations for that active management area.

20 3. The district shall include a replenishment reserve charge in the
21 annual replenishment assessment levied against all parcels of category 1
22 member land as provided in section 48-3774.01 and in the annual replenishment
23 tax levied against all municipal providers that have member service areas as
24 provided in section 48-3780.01. The replenishment reserve charge for each
25 active management area is established annually by the district based on the
26 reserve target for that active management area.

27 4. The district shall levy a replenishment reserve fee against
28 category 1 member lands pursuant to section 48-3774.01 and against member
29 service areas pursuant to section 48-3780.01. For category 1 member lands
30 the fee is equal to twice the applicable replenishment reserve charge
31 multiplied by the total projected average annual replenishment obligation for
32 the member lands as reported by the director of water resources pursuant to
33 section 45-578, subsection F. For member service areas the fee is equal to
34 twice the applicable replenishment reserve charge multiplied by the excess
35 groundwater increment. With the approval of the district and the director of
36 water resources, long-term storage credits as defined in section 45-802.01
37 may be assigned to the district's replenishment reserve subaccount in lieu of
38 paying the replenishment reserve fee.

39 5. The district shall use replenishment reserve charges and
40 replenishment reserve fees collected within each active management area
41 together with all interest earned on the charges and fees to store water in
42 that active management area in advance of groundwater replenishment
43 obligations for the purpose of developing long-term storage credits as
44 defined in section 45-802.01 that shall be credited to the replenishment

1 reserve subaccount for that active management area as provided in section
2 45-859.01.

3 6. Beginning on January 1, 2030 or earlier, on approval of the
4 director of water resources pursuant to section 45-859.01, subsection K, the
5 district may transfer credits from a replenishment reserve subaccount to a
6 conservation district account as provided in section 45-859.01 to satisfy its
7 groundwater replenishment obligations.

8 7. If the district transfers credits from the replenishment reserve
9 subaccount for an active management area pursuant to section 45-859.01,
10 subsection E, the district shall include in the annual replenishment
11 assessment levied against all parcels of category 1 member land in that
12 active management area and, except as provided in section 48-3780.01,
13 subsection B, in the annual replenishment tax levied against all municipal
14 providers that have member service areas in that active management area a
15 reserve replacement component to fund the replacement of the transferred
16 credits. The district shall use all monies from the reserve replacement
17 component collected within an active management area together with all
18 interest earned on the monies to develop long-term storage credits as defined
19 in section 45-802.01 within that active management area to be credited to the
20 replenishment reserve subaccount for that active management area as provided
21 in section 45-859.01.

22 8. For the purposes of establishing and maintaining the replenishment
23 reserve, the district shall have access to excess central Arizona project
24 water equivalent to but no more than the access the Arizona water banking
25 authority has for the purposes specified in section 45-2401, subsection H,
26 paragraph 2.

27 F. Groundwater replenished by the district pursuant to a contract to
28 replenish groundwater under subsection B, paragraph 9 of this section shall
29 not be credited to a replenishment reserve subaccount established under
30 section 45-859.01.

31 G. The district shall not enter into a contract authorized under
32 subsection B, paragraph 9 of this section unless the district has determined
33 that the contract will not adversely affect the district's ability to fulfill
34 its obligations under this chapter. For each contract entered into under
35 subsection B, paragraph 9 of this section, the district shall perform its
36 contract replenishment obligations in the active management area in which the
37 service area of the municipal provider that is the party to the contract is
38 located.

39 H. If the district replenishes groundwater on behalf of a municipal
40 provider pursuant to a contract to replenish groundwater under subsection B,
41 paragraph 9 of this section, the amount of groundwater so replenished shall
42 be a replenishment credit to the municipal provider that may be applied by
43 the municipal provider on notice to the district to reduce the service area
44 replenishment obligations applicable to the municipal provider.

1 I. In the Phoenix active management area, the district, to the extent
2 reasonably feasible, shall replenish groundwater in the east portion of the
3 active management area and in the west portion of the active management area
4 in the approximate proportion that the groundwater replenishment obligation
5 attributable in a particular year to member lands and member service areas
6 located in the east portion of the active management area bears to the
7 groundwater replenishment obligation attributable in that year to member
8 lands and member service areas located in the west portion of the active
9 management area. For the purposes of this subsection, the boundary between
10 the east Salt river valley subbasin and the west Salt river valley subbasin
11 is the boundary between the east and west portions of the active management
12 area.

13 J. The costs and expenses charged by the district to an active
14 management area water district established under chapter 28 of this title for
15 delivery of surplus central Arizona project water to such active management
16 area water district for replenishment purposes shall not exceed the costs and
17 expenses for delivery of such water that are or would be included by the
18 district in the costs and expenses of replenishment for member lands and
19 member service areas within the active management area in which such active
20 management area water district is situated.

21 Sec. 2. Drought emergency groundwater transfer; delayed repeal

22 A. Notwithstanding section 45-544, subsection A, paragraph 2, Arizona
23 Revised Statutes, in areas outside of active management areas, groundwater
24 may be transported away from a groundwater basin on application to and
25 approval by the director of the department of water resources. The director
26 shall post the application on the department's website before approving the
27 application.

28 B. The director of the department of water resources shall approve a
29 request to transport groundwater away from a groundwater basin outside of an
30 active management area if the director finds that all of the following apply:

31 1. The governor has declared an emergency due to lack of precipitation
32 or a water shortage pursuant to section 35-192, Arizona Revised Statutes.

33 2. The groundwater to be transported will be withdrawn from a well
34 that is in existence as of the date of the governor's declaration of
35 emergency.

36 3. If the groundwater to be transported will be withdrawn from a well
37 within the incorporated area of a city or town, the city or town has
38 consented to the groundwater withdrawal.

39 4. If the groundwater to be transported will be withdrawn from a well
40 within the boundaries of a political subdivision, however designated,
41 established pursuant to title 48, chapter 17 or 19, Arizona Revised Statutes,
42 the political subdivision has consented to the groundwater withdrawal.

1 5. If the groundwater to be transported will be withdrawn from a well
2 within the boundaries of a county for use in another county, the county from
3 which the groundwater will be withdrawn has consented to the groundwater
4 withdrawal.

5 6. The groundwater to be transported will be transported only by motor
6 vehicle or train.

7 7. The groundwater transportation is necessary to provide water
8 supplies for domestic, stock watering or potable municipal water service
9 purposes in a location included in the emergency declaration.

10 8. The groundwater to be transported will be used only for domestic,
11 stock watering or potable municipal water service purposes.

12 9. The county, city, town or other political subdivision within which
13 the transported water is to be used has implemented an emergency conservation
14 plan sufficient to prevent nonessential use of the groundwater.

15 10. The groundwater to be transported will not be used in an active
16 management area.

17 C. If the director of the department of water resources approves the
18 request to transport groundwater away from a groundwater basin outside of an
19 active management area pursuant to subsection B of this section, the approval
20 is valid for six months, or until the director determines that the
21 groundwater transportation is no longer necessary to provide water supplies
22 for domestic, stock watering or potable municipal water service purposes in a
23 location experiencing a water shortage. On request, the director may extend
24 the approval of the groundwater transportation for one additional six month
25 period on the expiration of the original approval period, if the director
26 determines that all of the requirements of subsection B of this section
27 continue to apply. On expiration or revocation of the approval to transport
28 groundwater, the transportation of the groundwater shall immediately cease.

29 D. The director of the department of water resources shall approve or
30 deny a request to transport groundwater away from a groundwater basin outside
31 of an active management area within thirty days of the receipt of the
32 request. Title 41, chapter 6, article 7.1, Arizona Revised Statutes, does
33 not apply to this act.

34 E. Groundwater transported away from a groundwater basin outside of an
35 active management area pursuant to this act is subject to the payment of
36 damages.

37 F. Water transported pursuant to this section shall not be transported
38 to subsidize insufficient supplies due to continued growth or deficient base
39 water supplies.

40 G. This section is repealed from and after April 30, 2011.

41 Sec. 3. Legislative intent

42 It is the intent of this legislature by section 2 of this act to
43 provide interim water use for true emergencies.

1 Sec. 4. Retroactivity

2 Section 2 of this act is effective retroactively to from and after
3 April 30, 2010.

4 Sec. 5. Conditional enactment

5 Section 48-3772, Arizona Revised Statutes, as amended by this act, does
6 not become effective unless Senate Bill 1141, forty-ninth legislature, second
7 regular session, relating to groundwater replenishment, becomes law.

APPROVED BY THE GOVERNOR MAY 7, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.